EXHIBIT D

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PAGES: 1 - 306
EXHIBITS: Per index

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

C.A. No. 6:05-cv-424-LED-JDL

ADVANCEME, INC.,)
Plaintiff)
)
vs.)
)
)
RAPIDPAY LLC, BUSINESS CAPITAL)
CORPORATION, FIRST FUNDS LLC,)
MERCHANT MONEY TREE, INC.,)
REACH FINANCIAL, LLC and)
FAST TRANSACT, INC.)
d/b/a SIMPLE CASH,)
Defendants)

C.A. No. 6:06-cv-82-LED

ADVANCEME, INC.,)
Plaintiff)
)
vs.)
)
)
AMERIMERCHANT, LLC,)
Defendant.)

VIDEOTAPED DEPOSITION

OF

THOMAS J. LITLE, IV

WEDNESDAY, SEPTEMBER 6, 2006

Q. When was Litle & Company formed?
A. 2001. June, I think. July, maybe.
Q. What is the business of Litle & Company?
A. We're in the payment processing business.
MR. GRAY: Could you mark this?
(Magazine entitled "Inc. 500," September, 2006 is marked Exhibit Number 2 for Identification.)
Q. The card payment processing industry, you said? You said the payment processing. Is it card payment processing?
A. Yeah. Credit card and debit card and all kinds of cards.
Q. Okay. I'm handing you what has been marked Litle 2, which is the September, 2006 issue of "Inc. 500." I've marked two pages. I think it begins on Page 78.
MR. EDELMAN: Do you have a copy of that?
MR. GRAY: I don't. I just have the original.
MR. GOLDIN: It's on the newsstand.
Q. The article -- it's an article about you and your company and it ranks you number 1; is

that correct?
A. That's right.
Q. Have you seen this article before?
A. Interestingly enough, these are very hard to come by. This is only the second one I've seen, so --
Q. Have you had a chance to read the article?
A. Yes.
Q. And does it accurately describe what your company is and your background?
A. Yes.
Q. Okay. In that article, it mentions, on the next page, it mentions Litle & Company -- sorry, the following page -- which page is that? 92?
A. 82.
Q. 82. Page 82, it mentions Litle & Company -- another Litle & Company that was sold to First USA in 1995; is that right?
A. That's right.
Q. And what is the relationship between the Litle & Company that was sold in 1995 to the current Litle & Company?
A. There is no relationship.
Q. Okay. Were they involved in similar

made for -- on behalf of a merchant was to fulfill a merchant's obligations to one of their suppliers in one form or another. The supplier could be either a fulfillment company, it could be a credit facility that they had, or it could be a postage advance that we made.

Q. Okay, and we'll go into those each in more detail, but first --

(Document entitled "Litle & Company, Member Agreement" is marked Exhibit Number 4 for Identification.)

Q. I'm handing you what has been marked Litle 4, which is a Litle & Company Member Agreement entered into between or among Litle & Company, National Processing Company, First National Bank of Louisville and the undersigned merchant, which is Museum Publications of America. Have you seen this Member Agreement before?

A. I wrote most of it.

Q. So you actually drafted this document?

A. That's right.

Q. Could you describe what this document -- the

agreement that's embodied in this document?
A. Yes. The relationship of a merchant to a payment processor is quite complicated because the payment processor has to underwrite credit for the merchant, it has to provide the merchant funds, it has to deal with disputes or help the merchant with disputes. It's a complicated relationship, and this agreement describes that relationship.

Q. If you look at the first page, which is Bates labeled LI00018 -- second page -- sorry.
A. Yeah.
Q. In the left column, third paragraph down it says, "Whereas, Litle and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of charge cards," do you see that?
A. Yes.
Q. Could you describe Litle and NPC's relationship?
A. NPC was at the time the world's largest payment processing company that was owned a

merchant, and I'd like to go through each one of those in detail at this point, all right, beginning with the example you gave involving a line of credit a merchant received.

A. All right.

MR. GRAY: I'd like to mark this.

(Letter dated February 17, 1994 is marked Exhibit Number 5 for Identification.)

Q. I'm handing you what has been marked Litle 5, which is a letter from Robert George, the President of Boston Publishing Company, what appears to be the President of Boston Publishing Company, to Michael Duffy, Vice-president of Litle & Company, dated February 17, 1994. Could you describe the agreement that this letter speaks about?

MR. SMITH: Objection. You skipped a step there.

Q. Have you seen this letter before?

A. Yes.

MR. EDELMAN: Objection. Vague and ambiguous. Leading.

Q. Could you describe the agreement this letter

embodies?
A. This letter describes an agreement between Hanover Direct and Boston Publishing Company in which Hanover Direct supplied a line of credit of three million dollars to Boston Publishing, and Hanover has -- has a security interest in lots of Boston Publishing's assets, maybe all of them, including the right, and I'm quoting, "rights of the borrower," meaning Hanover, "to receive payments in respect of card sales from Litle & Company.
Q. What does that mean?
A. That means, as I interpret this, that if Hanover Direct called us up and said, in Step Z there, "Instead of sending the money to Boston Publishing, send some or all of it to Hanover Direct."
Q. In the situation where FNBL would send some of the money to Hanover Direct, where would the remaining portion be sent?
A. Go to the merchant.
Q. So FNBL would forward a percentage of the credit card receipts to Hanover Direct --
A. That's right.

Q. -- electronically --
A. That's right.
Q. -- and would electronically forward the remainder of the credit card payments to the merchant?

A. That's right.
Q. Are you aware of any relationship between Boston Publishing Company and Museum Publications of America?
A. One of them was the name of the catalog and one of them was the name of the company that owned the catalog, as far as I can tell.
Q. Did Litle 5 -- did this letter amend an agreement similar to the Member Agreement that was in Litle 4 between Museum Publications of America and Litle & Company?
A. I suppose -- yes. I suppose it did.
Q. How would FNBL electronically forward a portion of those credit card receivables to Hanover Direct?
A. Either wire or ACH. I wouldn't know which without looking at the agreement more carefully.
Q. Is there any relationship between Litle &

money was going to a third party.
Q. Okay. So in this situation, the merchant would have an obligation to pay some portion of the receivables to Hanover Direct; correct?
MR. EDELMAN: Objection. Vague and ambiguous. Leading.
A. According to this agreement, the merchant and Hanover Direct made, yes.
Q. And a customer would go to a Hanover Direct retail store or outlet?
A. Actually, that's confusing. Hanover Direct happened to be a catalog. It happened to be a customer of ours. So I'm getting that a little confused. If you look at them strictly as providing a line of credit -- I think that's the context you're looking at now -- and this in that case, the consumer would have bought something from Museum Collections Outlet Store, and so the Museum Collections money would go through that process and Hanover Direct would be the third party. It happened by coincidence to be a catalog, but that was not significant in the scheme of things.

successfuly sold the company, and that was -- that kind of stuff was pretty well-known.

Q. Okay. I'd like to talk to the postage advance arrangement in detail, but as far as the financing arrangement, the payments to creditors, like you just described on the board, how would the merchants learn about that situation?

MR. EDELMAN: Objection. Calls for speculation, lack of foundation.

A. They'd ask us. I mean, they heard about us from the consultant -- typically, the consultants. I can think of one who probably got four or five people to come to us because he was working with the company and providing value in his consulting and he found this information to help him provide values to his clients.

Q. Do you remember his name?

A. Yes, I do.

Q. What is that?

A. Jim Alexander.

(Three-page photocopy of article entitled "People thought I was

nuts" is marked Exhibit Number 6
for Identification.)
A. I don't remember if Jim was the --
MR. SMITH: There's no question before you --

A. -- consultant with Boston Publishing.
Q. Do you remember any of the merchants he was a consultant for?
A. Not that actually used the service. I just remember he was aware of what we were doing.
Q. So Litle & Company's ability to perform this service was commonly known among consultants?
MR. EDELMAN: Objection. Vague and ambiguous.
A. I believe it was. You know, I certainly talked about it a lot. It was a value-added service that we offered that nobody else -- no other payment processor seemed to offer on a regular basis and it made us look better to prospects.
Q. I'm handing you what has been marked Litle 6, which is an article from Forbes June 8, 1992 issue, Volume 149, Note 12, Page 120, entitled "People thought I was nuts." Is

this the article you referred to just a minute ago?

A. I think so. Let me take a look at it. Yes, it is.

Q. If you look at Page 3 of Litle 6 marked

L1000003 --

A. Yeah.

Q. -- the first full paragraph on the page says "Finding capital remained a problem, but Bourne was innovative. Postage was his largest expense and in 1989, when he needed money, he turned to his credit card processor, a New Hampshire-based company called Litle & Co. Litle agreed to finance his postage by discounting his credit card receivables. It was such a good idea, other catalogers have followed suit."

Can you describe, generally, the process of postage financing?

A. Yeah. By discounting his credit card receivables wasn't quite it. It was -- his credit card receive abilities, we paid some of them to a third party. It wasn't exactly discounted, but other than that, this is exactly what I've described, except that paying the money to a third party was paying it to us because we advanced them the postage. What we did -- and in order to advance him the postage, the process we would go through is, we would determine approximately what his Visa and MasterCard receivables or proceeds were going to be during the period immediately after he mailed the catalog, and then we would actually pay his postage bill. We wouldn't pay him. We'd actually pay the post office. We made sure the check went from us into the post office's hands. So he'd never see the check. He knew how much it was. Then we would -- we changed it around for a while, as we were getting used to it, but effectively, we would add a fee to the amount of the postage, and then we'd collect -- we'd collect a portion or we'd keep a portion of the proceeds that we would otherwise send him until we recovered our initial postage amount, plus our fee.

Q. You said you would keep a portion of the credit card receivables?

A. Yes.

(Three-page document entitled "Schedule E-1, Demand Promissory Note for Postage Advances" is marked Exhibit Number 7 for Identification.)

Q. I'm handing you what has been marked Litle 7, which is Schedule E-1, Demand Promissory Note for Postage Advances. The parties who signed were Robert George from Litle & Company --
A. No. Robert George was from --
Q. -- from Museum Publications of America. At the top of Litle 7, it says "Schedule E-1." Is this a schedule E-1 to the Member Agreement?
A. Yeah. It's basically an addendum to the Member Agreement.
Q. Okay. So it's an addendum agreement to the Member Agreement in Litle 4?
A. Right. I think so. Litle 4 or a subsequent agreement. I don't know.
Q. But a similar agreement with Museum Publications --
A. Right.
Q. -- of America. At the top of this page, it

done it for less than five percent.

(Five-page document beginning with Interoffice Memorandum dated January 24, 1990 is marked Exhibit Number 8 for Identification.)

Q. I'm handing you what has been marked Little 8, which appears to be an Interoffice Memorandum from you to John Shirey and copied, Steve Tritman, dated January 24, 1990, and the subject is "New Product - Postage Advance." Is that right?
A. Yeah.
Q. Have you seen this letter before?
A. Yes. I wrote it.
Q. Could you tell me what this letter relates to?
A. I guess this -- this was an internal memo talking about a Postage Advance Program that I had been thinking about and talking to Exposures, actually, about.
Q. And it appears that you attached a letter from you to Allen Abbott on Page 3, which is LI00065 --
A. That's right.
Q. -- dated December 27, 1989?

A. Yeah. Wow, it went back quite a way, didn't it.
Q. Had you engaged in any postage advances prior to this letter to Exposures?
A. No.

Q. If you look at the last page of the exhibit, which is LI00067, it has an Excel spreadsheet or a spreadsheet?
A. Yeah.
Q. Could you describe what the spreadsheet contains?
A. Yeah. I'll have to study it, but in general, what it did is, it outlined my then concept of how the postage financing would work, including what the fees would be and how we would collect our fee -- or for example advance, what the example advance would be, how we would collect our fee, how we would get paid back for the advance.
Q. Does this show how, as Litle & Company received payments -- or would receive payments from FNBL, the merchant's outstanding balance would be paid down? If you look at Column E.
A. Yes. In fact, Column E is what the

was an electronic transfer. I should add, though, that when you say "Did they process that from Museum Collections," it was, again, all done in bulk. We had the details. We said "This is how much it adds up. Today, transfer this much out of the distribution account into the reserve account."

Q. Did you account internally for the balance in that reserve account for each individual merchant?

A. Yes.

MR. GRAY: One last thing before the lunch break.

(Five-page document entitled "Schedule E-1, Promissory Note for Postage Advances" is marked Exhibit Number 9 for Identification.)

Q. I'm handing you what has been marked Litle Exhibit 9, which says "Schedule E-1, Promissory Note for Postage Advances," signed by Allen Abbott of Exposures; is that correct?

A. That's right.

Q. And is this the same Exposures that's

referenced in the Interoffice Memorandum,
Litle Exhibit 8?
A. Yes.
Q. And this agreement reflects the
negotiations -- or does this agreement

reflect the negotiations between you and
Allen Abbott?
A. Yes.
Q. Are there any differences between Litle
Exhibit 7 and Litle Exhibit 9, the two
promissory notes? Let me rephrase. Any
differences in the way the system worked or
the process.
A. Not really. There probably were slight
improvements between when we first did the
Exposures in the way the agreement was
written. I think, by that time, by
Exhibit 7, we made it clear we were
collecting our fee first, for example, and
there probably were mostly contractual
differences, but the way the system actually
worked was identical.
Q. Is the Member Agreement referred to in Litle
Exhibit 9 substantially similar to the
Member Agreement in Litle Exhibit 4?

computer chip on them that did something. There are cards now that carry changing passwords on it, sort of like an RSA password. There are cards that you can stick your thumb over and it can identify the fact that your thumb print is really your thumb print and not somebody else's. A Smart Card encompasses all kinds of stuff. A Smart Card typically had to be used in conjunction with some sort of terminal device. So we didn't handle any Smart Cards that I know, except that it's also my understanding that some Smart Cards had Visa or MasterCard identification numbers on them, and if that case, if somebody gave those Visa and MasterCard identification numbers over the telephone as a card-not-present card, we would handle it like we'd handle any other credit card, although we wouldn't necessarily know it was a Smart Card.

Q. Could you look at Page 8 of Litle Exhibit 12, the very bottom line, and Page 9, and tell me whether the citations to the Litle documents in the right-hand column

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS.

I, Denise M. Rae, a Certified Shorthand Reporter and Notary Public duly commissioned and qualified within and for the Commonwealth of Massachusetts, do hereby certify:

That THOMAS J. LITLE, IV, the witness whose deposition is hereinbefore set forth, was duly sworn by me, and that such deposition is a true record of the testimony given by the witness to the best of my skill, knowledge, and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and my affixed notarial seal this 8th day of September, 2006.

Denise M. Rae

____

Denise M. Rae
Notary Public

My commission expires:
January 16, 2009